HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

and

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

Writ Appeal No. 2420 of 2005

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Between:

Ambati Srinivasulu S/o. Venkaiah,

Dagadarthi Mandal, Nellore District.

... APPELLANT

AND

The District Collector, Nellore and others.

...RESPONDENTS

::JUDGMENT::

Counsel for the Appellant :MR.V.SUDHAKAR REDDY

Counsel for the Respondents : GP FOR CIVIL SUPPLIES

13th December, 2005

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Per G.S. Singhvi, CJ

Rules of natural justice are multi faceted and multi dimensional. Different facets of these rules have been applied by the Courts in India to invalidate administrative as well as judicial, quasi-judicial actions and orders. One of the facets of the rules of natural justice is that all judicial, quasi-judicial and even administrative authorities who are entrusted with the task of deciding lis between the parties or passing order which affects the rights, interest or status of a person must record reasons in support of their findings and conclusions and such reasons should be communicated to the person concerned. The requirement of recording reasons by judicial, quasi-judicial and even administrative authorities and communication thereof to the affected persons has been highlighted and reiterated in various judgments of the Supreme Court including the often referred decisions in **Harinagar Sugar Mills v. Shyam Sundar, M.P.Industries Limited v. Union of India, Bhagat Raja v. Union of India, Mahavir Prasad Santoshkumar v. State of U.P., Travancore Rayons v. UOI, Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi, Messrs Siemens Engineering & Manufacturing Company v. Union of India, S.N. Mukherjee v. Union of India, Charan Singh v. Healing Touch Hospital State of Punjab v. Bagh Singh, State of Orissa v. Dhaniram Luhar, State of Rajasthan v. Sohan Lal, Cyril Lasrado v. Juliana Maria Lasrado, Mangalore Ganesh Beedi Works v. CIT** and **Manorama Sachan v. Lucknow Development Authority**. In **S.N. Mukherjee v. Union of India** ([8] supra) the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of judicial precedents on the subject and laid down the following proposition:

> "… Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do

so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of

U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

In **State of Punjab v. Bagh Singh**[10] (supra) the Supreme Court observed:

"Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **State of Rajasthan v. Sohan Lal**[12] (supra) the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

"The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. ... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. …"

In **Cyril Lasrado v. Juliana Maria Lasrado**[13] (supra) the Supreme Court considered the same question and held as under:

"… Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that

if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **Testeels Limited v. N.M. Desai, Conciliation Officer and another**, a Full Bench of the Gujarat High Court made a lucid exposition of law on the subject and we can do no better than to reproduce the relevant paragraphs of that judgment, which are as under:

"There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in Jaswant Sugar Mills's case, AIR 1963 SC 677 supra, a quasi-judicial decision involves the following three elements:

1. It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

2. It declares rights or imposes upon parties obligations affecting their civil rights; and

3. The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-

judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction."

We have prefaced the disposal of this appeal by making reference to various judicial pronouncements on the subject because after hearing learned counsel for the parties and perusing the records including order dated 2.112005 passed by the learned Single Judge in Writ Petition No.23547 of 2005, which is under appeal, we are convinced that order dated 12.12.2004 passed by Revenue Divisional Officer, Kavali cancelling authorisation of the fair price shop dealership of the appellant, order dated 16.8.2005 passed by Joint Collector, Nellore and order dated 3.10.2005 passed by District Collector, Nellore dismissing the appeal and revision filed by the appellant against the order of the Revenue Divisional Officer, are vitiated due to violation of the rules of natural justice inasmuch as neither of these orders fulfill the requirement of a 'speaking order' and that the learned Single Judge committed a serious legal error by upholding the orders impugned in the writ petition without adverting to the core issue raised by the petitioner.

The appellant was appointed as fair price shop dealer at Chowtaputtedu Village in 1991. On 27.6.2004, a news item was published in Eenadu suggesting commission of irregularities by the appellant. The Mandal Revenue Officer, Dagadarthi instructed Civil Supplies Deputy Tahsildar to inspect fair price shop run by the appellant. The officer concerned reported that the appellant had diverted the S.G.R.Y. rice in black market for personal gain and had acted in violation of the provisions contained in Andhra Pradesh State Public Distribution System Control Order, 2001 (hereinafter referred to as 'the 2001 Order'). On receipt of the inspection report, Joint collector,

Nellore initiated action under Section 6-A of the Essential Commodities Act, 1955. The appellant filed reply to the show cause notice and denied the allegation of having diverted SGRY rice or P.D.S. rice to black market. After considering his explanation, Joint Collector, Nellore, passed order dated 19-3-2005 whereby he held that the charge of variation in S.G.R.Y. stocks and accounts is not proved. He, however, imposed penalty of fine of Rs.1,000/- on the premise that the appellant had failed to maintain the F.P. shop accounts. The relevant extracts of that order are reproduced below:

> Heard the arguments and perused the records. On scrutiny of the F.P.Shop accounts it is noticed that F.P.Shop dealer made double entries and error in totaling caused an excess of 67 kgs. In SGRY distribution register, which has been considered on accounting error and there is no variation in SGRY stocks and accounts.
>
> Therefore, it is hereby ordered to impose fine of Rs.1000/- on the respondent F.P.Shop dealer for improper maintenance of F.P.Shop accounts. The value of the seized shall be released to the F.P.Shop dealer. The respondent is hereby warned to be careful in maintaining of F.P.Shop. Accordingly, the 6-A case is dropped.

In the meanwhile, Revenue Divisional Officer, Kavali, initiated action for cancellation of the authorization as fair price shop dealer on the following charge:

> "CHARGE No.1: The following variations are found during verification of accounts on physical verification and with reference to Books.
>
> P.D.S. Rice : 210 Kgs.
>
> SGRY Rice : 4056 Kgs."

Simultaneously, the officer concerned suspended the authorization of the appellant. The appellant challenged the same by filing an appeal before the Joint Collector, Nellore. He also applied for stay of the order of suspension. After sometime, he filed Writ Petition No.15173 of 2004 with the complaint that the stay application filed by him is not being decided. The same was disposed of on 25-8-2004 with the direction to the Joint Collector to decide the stay application. The latter disposed of the main appeal and directed the Revenue Divisional Officer to pass final order.

In the reply filed by him to the show cause notice issued by the Revenue Divisional Officer, the appellant pleaded that he had not committed any irregularity and there was no warrant for cancellation of his authorization. The substance of the

explanation offered by the appellant was as under:

> "The dealer submits that he receives rice from MLS Point towards PDS, SGRY and AAY. The stocks of rice supplied on all three heads is one and the same variety. As such, the stocks are clubbed and distributed. It is impossible to keep the rice programme wise as the respective stocks are brought together and supplied as a single lot. Hence it is prayed that this Hon'ble Court be pleased to drop the case and restore the dealership."

After considering the reply of the appellant, Revenue Divisional Officer, Kavali passed order dated 12-12-2004, the operative part of which reads as under:

> "In reference No.3 read above the Joint Collector, Nellore has directed to issue final orders by the Revenue Divisional Officer, Kavali to dispose the matter.
>
> The explanation offered by the dealer Sri. A. Srinivasulu is not convinced. Hence, I do order that the authorization of the dealer is hereby cancelled."

The appeal filed by the appellant against the order of the Revenue Divisional Officer was dismissed by Joint Collector, Nellore vide his order dated 16.8.2005, the relevant portion of which is reproduced below.

> "The records are perused. The 6-A case was disposed and a penalty of Rs.1,000/- was imposed. As such the appellant cannot claim that 6-A case was dropped. Maintenance of proper records is obligatory on the pace of F.P. shop dealer as per the conditions of authorization issued. Hence, no interference is required into the orders issued by the RDO and accordingly the appeal is dismissed."

Dissatisfied with the order of the Joint Collector, the appellant filed revision petition under Clause 21 (1)(i) of the 2001 Order. District Collector, Nellore vide his order dated 3-10-2005 dismissed the revision. He noted ten points raised by the appellant in the Memo of Revision, but dismissed the same by recording the following observations:

> "Heard the arguments and perused the connected records. According to Condition 4 (i)(ii) of authorization issued to the F.P.Shop dealer, the dealer shall maintain registers / records that may be prescribed from time to time by the Government / Appointing Authority / Collector / RDO or the ASO concerned and the dealer shall also complete his accounts for each day on the day to which they relate. In the instant case, the dealer has not maintained registers / records properly. Thereby he violated these important conditions. Besides variations were found place."

The appellant challenged the aforementioned three orders in Writ Petition No. 23547 of 2005 by contending that the impugned orders were vitiated due to violation of rules of natural justice inasmuch as none of the three authorities had recorded reasons in support of their orders. He also pleaded that before canceling authorization, the Revenue Divisional Officer did not give him reasonable opportunity of hearing in regard to the allegation of not maintaining proper records. The learned Single Judge did not advert to the ground on which the appellant challenged the orders impugned in the writ petition and dismissed the same by observing that the appellant had been found guilty of violating Condition No. 4(i) and (ii) of the authorisation.

We have heard the learned counsel for the parties.

A bare reading of the original order passed by Revenue Divisional Officer shows that the only allegation levelled against the appellant was that during physical verification with reference to books of account, variation was found in respect of P.D.S rice to the extent of 210 kgs., and S.G.R.Y. rice to the extent of 4056 kgs. The show cause notice issued to the appellant did not contain the allegation that he had failed to maintain the books of accounts or registers as per Condition No. 4(i)(ii) of the authorisation. In his reply, the appellant pleaded that there was no variation in the stocks and accounts. The Revenue Divisional Officer, Kavali did notice the contents of the reply filed by the appellant, but without assigning any reasons and without even holding that the charge levelled against him has been proved, ordered cancellation of his authorization. The Joint Collector, Nellore dismissed the appeal by observing that maintenance of proper records is obligatory on the part of fair price shop dealer as per the conditions of authorisation. District Collector, Nellore dismissed the revision by observing that the dealer had violated condition No.4 (i)(ii) of the authorization. While doing so, both the officers overlooked the fact that the appellant had not been charged with the allegation of having failed to maintain the records and register as per the requirement of Condition No.4 (i)(ii) of the authorization.

In our opinion, the orders passed by the three authorities are liable to be nullified not only because the same are devoid of reasons and do not satisfy the test of a ‘speaking order’, but the appellate and revisional orders are liable to be quashed on

an additional ground that Joint Collector, Nellore and District Collector, Nellore upheld the order of cancellation of authorization by assuming that the appellant was guilty of violating Condition No.4 (i)(ii) of the authorization, though this was not even subject matter of the charge levelled against him, and he was not afforded opportunity to explain his position in that regard. In our considered view, the appellant could not have been condemned by being presumed guilty of a charge which was not subject matter of the show cause notice.

Unfortunately, the learned Single Judge did not even advert to the crucial and core issue raised in the writ petition and dismissed the writ petition simply by observing that the appellant had been found guilty of violation of Condition No. 4(i) and (ii) of the authorisation. The omission of the learned Single Judge to consider the question whether the appellant had been charged with the allegation of violating Condition No.4 (i) and (ii) of the authorization and whether the orders passed by the Revenue Divisional Officer, Kavali, Joint Collector and Collector, Nellore satisfied the test of a 'speaking order' has resulted in failure of justice.

Before concluding, we deem it necessary to observe that the allegation of variation in the stock and accounts had not been found proved by Joint Collector, Nellore in the proceedings initiated by him under Section 6-A of the Essential Commodities Act, 1955. It is difficult to comprehend as to how a contrary finding could be recorded by the same officer while disposing of the appeal filed by the appellant against the order of cancellation of authorization.

For the reasons mentioned above, the appeal is allowed. Order dated 2.11.2005 passed by the learned Single Judge in Writ Petition No. 23547 of 2005 is set aside and orders dated 12.12.2004, 16.8.2005 and 3.10.2005 of Revenue Divisional Officer, Kavali, Joint Collector, Nellore and District Collector, Nellore are quashed. This would necessarily mean restoration of the authorization of the appellant as fair price shop dealer. Costs made easy.

G.S. SINGHVI, CJ

Date: 13th December, 2005

R. SUBHASH REDDY, J

Pnb/svs